



**4310-VC**

**DEPARTMENT OF THE INTERIOR**

**OFFICE OF THE SECRETARY**

**[LLWO100000, L18200000.XX0000]**

**Oil, Gas, and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico**

**AGENCY:** Department of the Interior.

**ACTION:** Notice of Secretary's Order 3324.

**SUMMARY:** Secretary's Order 3324 revises and supersedes the Order of the Secretary of the Interior, dated October 28, 1986 (51 FR 39425), and corrected on August 26, 1987 (52 FR 32171), and provides procedures and guidelines for more orderly co-development of oil and gas and potash deposits owned by the United States within the Designated Potash Area through safe, concurrent operations.

**EFFECTIVE DATE:** December 3, 2012.

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**SUPPLEMENTARY INFORMATION:**

Secretary's Order 3324 reads as follows:

ORDER NO. 3324

**Sec. 1 Purpose and Effect.** This Order revises and supersedes the Order of the Secretary of the Interior, dated October 28, 1986 (51 FR 39425), and corrected on August 26, 1987 (52 FR 32171), and provides procedures and guidelines for more orderly co-

development of oil and gas and potash deposits owned by the United States within the Designated Potash Area through safe, concurrent operations.

**Sec. 2 Authority.** This Order is issued in accordance with the authority vested in the Secretary of the Interior in the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359); the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), and regulations and onshore orders implementing these statutes.

**Sec. 3 Order Revised and Superseded.** The Order of the Secretary of the Interior dated October 28, 1986 (51 FR 39425), and corrected on August 26, 1987 (52 FR 32171), is hereby superseded by this revised Order. The following provisions will apply to concurrent operations in prospecting for, developing, and producing oil and gas and potash deposits owned by the United States within the Designated Potash Area.

**Sec. 4. Definitions.**

a. Authorized Officer. Any employee of the Bureau of Land Management (BLM) authorized to perform duties described in 43 CFR Parts 3000, 3100, and 3500, as delegated in the BLM Manual.

b. Barren Area. An area established by the BLM within the Designated Potash Area for which sufficient data is available to establish a lack of potash mineralization in sufficient thickness and quality to be mineable under existing technology and economics.

c. Buffer Zone. Areas established by the BLM within the Designated Potash Area:

(1) extending outward a certain distance from the perimeter of existing underground open mine workings within which oil or gas operations are generally not allowed due to a BLM determination that oil or gas drilling could constitute a hazard to or interfere with orderly potash mining operations, or

(2) extending outward a certain distance from operating oil or gas well(s) or established Drilling Islands within which potash operations are generally not allowed due to a BLM determination that potash mining or exploration operations could constitute a hazard to or interfere with orderly oil or gas operations.

d. Co-development. The concurrent development of oil and gas and potash resources within the Designated Potash Area. Co-development is a cooperative effort between industries under the guidelines of this order, as regulated by the BLM, to support production of potash and oil and gas from the lands within the Designated Potash Area.

e. Designated Potash Area. The land area described in Section 8 of this Order.

f. Development Area. An area established by the BLM within the Designated Potash Area in consideration of appropriate oil and gas technology such that wells can be drilled from a Drilling Island capable of effectively extracting oil and gas resources while managing the impact on potash resources. Each Development Area will typically have only one Drilling Island, subject to narrow exceptions based on specific facts and circumstances. All new oil and gas wells that penetrate the potash formations within a Development Area will be drilled from the Drilling Island(s) associated with that Development Area. The boundaries of each Development Area will be determined in conformity with Section 6.e.(2).

g. Drilling Island. An area established by the BLM, usually associated with and within a Development Area, from which all new drilling of vertical, directional, or horizontal wells that newly penetrate the potash formations can be performed in order to support the development of oil and gas resources. The size and shape of a Drilling Island defines the area where wellbore penetrations of the potash formations will be allowed; this area is to be as small as practical to allow effective oil and gas development while managing impacts on potash.

h. Indicated Resources. Potash resources from which tonnage, grade, and mineral content are computed partly from specific measurements and samples, and partly from projection of geologic evidence. Indicated Resources are estimated at a lower level of confidence than Measured Reserves.

i. Inferred Resources. Potash resources which are probable, considering reasonably correlated data from lithologic descriptions and well logs, but for which tonnage and grade cannot be computed due to the absence of specific data.

j. Joint Industry Technical Committee. A committee established by, and subject to the management and control of, the potash mining industry and the oil and gas industry whose role is to study how concurrent development of potash and oil and gas can be safely performed in proximity to each other. While the committee may provide input to the BLM on such matters as indicated herein or otherwise at its discretion, it will not be subject to the BLM's management or control.

k. Measured Reserves (also known as "Potash Enclave"). Areas within the Designated Potash Area where potash is known to exist in sufficient thickness and quality to be mineable under existing technology and economics.

l. Potash. Potassium and associated minerals as specified in the Act of February 27, 1927 (30 U.S.C. §§ 281-287).

m. Unknown Area. An area within the Designated Potash Area where there is an absence of data for the BLM to classify the mineralization as Measured Reserves, Indicated Resources, Inferred Resources, or Barren Area.

**Sec. 5 Status of Lands.** This Order will not affect the current status of lands with respect to their being withdrawn from or open to entry or leasing.

**Sec. 6 General Provisions.**

a. Issuance of Oil and Gas Leases. The Department of the Interior reaffirms its policy that the lease stipulations contained in the Order of the Secretary of the Interior dated October 28, 1986, and corrected on August 26, 1987 (52 FR 32171), are necessary to protect the rights of the oil and gas and potash lessees and operators. Therefore, each successful applicant for a noncompetitive oil and gas lease, and any party awarded a competitive lease, for lands included in the Designated Potash Area, is required, as a condition to the issuance of such lease, to execute a stipulation to the lease as follows:

(1) Drilling for oil and gas shall be permitted only in the event that the lessee establishes to the satisfaction of the Authorized Officer, BLM, that such drilling will not interfere with the mining and recovery of potash deposits, or the interest of the United States will best be served by permitting such drilling.

(2) No wells shall be drilled for oil or gas at a location which, in the opinion of the Authorized Officer, would result in undue waste of potash deposits or constitute a hazard to or unduly interfere with mining operations being conducted for the extraction of potash deposits.

(3) When the Authorized Officer determines that unitization is necessary for orderly oil and gas development and proper protection of potash deposits, no well shall be drilled for oil or gas except pursuant to a unit plan approved by the Authorized Officer.

(4) The drilling or the abandonment of any well on said lease shall be done in accordance with applicable oil and gas operating regulations (43 CFR 3160), including such requirements as the Authorized Officer may prescribe as necessary to prevent the infiltration of oil, gas, or water into formations containing potash deposits or into mines or workings being utilized in the extraction of such deposits.

In addition, the Authorized Officer will include a lease provision which states that drilling for and production of oil and gas will be subject to the terms of this Order, any subsequent revisions, and the orders of the Authorized Officer thereunder.

b. Reinstatement or Renewal of Oil and Gas Leases. As a condition to the granting of any discretionary reinstatement or renewal of any existing lease that includes lands in the Designated Potash Area, the BLM will impose stipulations identical to those specified in Section 6.a.

c. Potash Leases.

(1) All potash permits, licenses, and leases hereafter issued or existing potash leases hereafter readjusted for Federal lands within the Designated Potash Area, must be subject to a requirement, either to be included in the lease, license, or permit or imposed as a stipulation, that no mining or exploration operations may be conducted that, in the opinion of the Authorized Officer, will constitute a hazard to oil or gas production, or that will unreasonably interfere with orderly development and production under any oil and

gas lease issued for the same lands.

(2) BLM will continue to include applicable due diligence stipulations in all potash leases issued or readjusted after the date of this Order.

(3) Before being allowed to participate in a competitive lease sale, all bidders must certify in writing that they have an identifiable, substantial, and genuine interest in developing the potash resources and that they intend to develop the potash resources in accordance with the applicable diligence stipulations.

(4) In addition, the Authorized Officer will include a lease provision providing that potash mining operations will be subject to the terms of this Order, any subsequent revisions, and the orders of the Authorized Officer thereunder.

d. Delineation of Resource Areas. Each potash lessee must file annually by March 1, with the Authorized Officer, data and a map(s) on which has been delineated the following information with respect to the Federal, state, and private potash leases which the lessee then holds; and lands on which exploration activities have been conducted.

(1) Those areas where active mining operations are currently in progress in one or more ore zones;

(2) Those areas where operations have been completed in one or more ore zones;

(3) Those areas that are not presently being mined which are considered to contain Measured Reserves in one or more ore zones;

(4) Those areas that are not presently being mined which are considered to contain Indicated Resources in one or more ore zones;

- (5) Those areas that are not presently being mined which are considered to contain Inferred Resources in one or more ore zones;
- (6) Those areas that are considered to be Barren Areas;
- (7) Those areas that are Unknown Areas; and
- (8) Those areas that are planned to be mined as per a three-year mine plan.
- (9) The Authorized Officer will annually review the information submitted under this requirement and make any revisions to the boundaries of Measured Reserves, Indicated Resources, Inferred Resources, Barren Areas, and Unknown Areas. Upon verification, the Authorized Officer will commit the initial findings to a map(s) of suitable scale and will thereafter revise that map(s) as necessary to reflect the latest available information.

e. Oil and Gas Drilling.

(1) Drilling within the Designated Potash Area. It is the intent of the Department of the Interior to administer oil and gas operations throughout the Designated Potash Area in a manner which promotes safe, orderly co-development of oil and gas and potash resources. It is the policy of the Department of the Interior to deny approval of most applications for permits to drill oil and gas wells from surface locations within the Designated Potash Area. Three exceptions to this policy will be permitted if the drilling will occur under the following conditions from:

(a) A Drilling Island associated with a Development Area established under this Order or a Drilling Island established under a prior Order;

(b) A Barren Area and the Authorized Officer determines that



such operations will not adversely affect active or planned potash mining operations in the immediate vicinity of the proposed drill-site; or

(c) A Drilling Island, not covered by (a) above, or single well site established under this Order by the approval and in the sole discretion of the Authorized Officer, provided that such site was jointly recommended to the Authorized Officer by the oil and gas lessee(s) and the nearest potash lessee(s).

(2) Development Areas.

(a) When processing an application for permit to drill (APD) an oil or gas well in the Designated Potash Area that complies with regulatory requirements, the Authorized Officer will determine whether to establish a Development Area in connection with the application, and if so, will determine the boundaries of the Development Area and the location within the Development Area of one or more Drilling Islands from which drilling will be permitted. The BLM may also designate a Development Area outside of the APD process based on information in its possession, and may modify the boundaries of a Development Area. Existing wells may be included within the boundaries of a Development Area. A Development Area may include Federal oil and gas leases and other Federal and non-Federal lands.

(b) After designating or modifying a Development Area, the BLM will issue a Notice to Lessees, consistent with its authorities under 43 CFR subpart 3105 and part 3180, informing lessees that future drilling on lands under an oil and gas lease within that Development Area will:

(i) Occur, under most circumstances, from a Barren Area or a Drilling Island within the Development Area; and

(ii) Be managed under a unit or communitization agreement, generally by a single operator, consistent with BLM regulations and this Order. Unit and communitization agreements will be negotiated among lessees. The BLM will consider whether a specific plan of development is necessary or advisable for a particular Drilling Island.

(c) The Authorized Officer reserves the right to approve an operator or successor operator of a Development Area and/or a Drilling Island, if applicable, to ensure that the operator has the resources to operate and extract the oil and gas resources consistent with the requirements of this Order and all applicable laws and regulations, and has provided financial assurance in the amount required by the Authorized Officer.

(d) The Authorized Officer will determine the appropriate designation of a Development Area in terms of location, shape, and size. In most cases, a single Drilling Island will be established for each Development Area. In establishing the location, shape, and size of a Development Area and an associated Drilling Island, the Authorized Officer will consider:

(i) The appropriate location, shape, and size of a Development Area and associated Drilling Island to allow effective extraction of oil and gas resources while managing the impact on potash resources;

(ii) The application of available oil and gas drilling and production technology in the Permian Basin;

(iii) The applicable geology of the Designated Potash Area and optimal locations to minimize loss of potash ore while considering co-development of

both resources;

(iv) Any long term exploration and/or mining plans provided by the potash industry;

(v) Whether a Barren Area may be the most appropriate area for a Drilling Island;

(vi) The requirements of this Order; and

(vii) Any other relevant factors.

(e) As the Authorized Officer establishes a Development Area, the Authorized Officer will more strictly apply the factors listed in Section 6.e.(2)(d), especially the appropriate application of the available oil and gas drilling and production technology in the Permian Basin, when closer to current traditional (non-solution) potash mining operations. Greater flexibility in the application of the factors listed in Section 6.e.(2)(d) will be applied further from current and near-term traditional (non-solution) potash mining operations. No Drilling Islands will be established within one mile of any area where approved potash mining operations will be conducted within 3 years consistent with the 3-year mine plan referenced above (Section 6.d.(8)) without the consent of the affected potash lessee(s).

(f) The Authorized Officer may establish a Development Area associated with a well or wells drilled from a Barren Area as appropriate and necessary.

(g) As part of the consideration for establishing Development Areas and Drilling Islands, the BLM will consider input from the potash lessees and the oil and gas lessees or mineral right owners who would be potentially subject to a

unitization agreement supporting the Development Area, provided that the input is given timely.

(3) Buffer Zones. Buffer Zones of  $\frac{1}{4}$  mile for oil wells and  $\frac{1}{2}$  mile for gas wells are hereby established. These Buffer Zones will stay in effect until such time as revised distances are adopted by the BLM Director or other BLM official, as delegated. However, the Authorized Officer may adjust the Buffer Zones in an individual case, when the facts and circumstances demonstrate that such adjustment would enhance conservation and would not compromise safety. The Director will base revised Buffer Zones on science, engineering, and new technology and will consider comments and reports from the Joint Industry Technical Committee and other interested parties in adopting any revisions.

(4) Unitization and Communitization. To more properly conserve the potash and oil and gas resources in the Designated Potash Area and to adequately protect the rights of all parties in interest, including the United States, it is the policy of the Department of the Interior that all Federal oil and gas leases within a Development Area should be unitized or subject to an approved communitization agreement unless there is a compelling reason for another operating system. The Authorized Officer will make full use of his/her authorities wherever necessary or advisable to require unitization and/or communitization pursuant to the regulations in 43 CFR subparts 3105 and 3180. The Authorized Officer will use his/her discretion to the fullest extent possible to assure that any communitization agreement and any unit plan of operations hereafter approved or prescribed within the Designated Potash Area will adhere to the provisions of this Order. The Authorized Officer will work with Federal lessees, and with the State of New

Mexico as provided below, to include non-Federal mineral rights owners in unit or communitization agreements to the extent possible.

(5) Coordination with the State of New Mexico.

(a) If the effective operation of any Development Area requires that the New Mexico Oil Conservation Division (NMOCD) revise the state's mandatory well spacing requirements, the BLM will participate as needed in such a process. The BLM may adopt the NMOCD spacing requirements and require lessees to enter into communitization agreements based on those requirements.

(b) The BLM will cooperate with the NMOCD in the implementation of that agency's rules and regulations.

(c) In taking any action under Section 6.e. of this Order, the Authorized Officer will take into consideration the applicable rules and regulations of the NMOCD.

(6) Approvals of Exploration on Existing Potash Leases and Potash Exploration Licenses.

(a) Exploration for potash on lands leased for potash is permitted only with approval by the BLM, in consultation and coordination with the potash lessee, of an exploration plan in accordance with 43 CFR subpart 3592 and subject to the terms and conditions of the potash lease.

(b) An oil and gas or potash operator may apply for an exploration license to drill core holes necessary to define the absence or existence and extent of mineable potash reserves in areas within the Designated Potash Area. Exploration

licenses allow the exploration of known, unleased mineral deposits to obtain geologic, environmental, and other pertinent data concerning the deposit. See 43 CFR subpart 3506. These licenses can be obtained from the Carlsbad Field Office, BLM. Costs for such exploration may be shared consistent with the provisions of 43 CFR 3506.14, if applicable.

(c) Should an oil and gas or potash operator desire to attempt to gather sufficient data for the BLM to establish a Barren Area in any part of the Designated Potash Area not defined as Barren, provisions and protocols are included in this Order for the operator to review relevant data in the area to design a core acquisition program (see Section 6.e.(8)(b) and (c) of this Order) and to obtain access to the land to acquire core data (see Section 6.e.(6)(b)). The BLM will develop and employ, as appropriate, data management protocols to protect the appropriate use of the data in its records. The BLM will use such newly acquired data to determine the resulting potash ore quality and make any changes to potash reserves and resources maps indicated by the new data.

(7) Notice to Affected Parties. An applicant for an Application for Permit to Drill (APD), or a proponent of a plan of development for a unit or communitization area or a proposal for a Development Area or a Drilling Island, will provide notice of the application, plan, or proposal to the potash lessees and potash operators in the Designated Potash Area and to the owners of the oil and gas rights and surface owners affected by such application, plan, or proposal. A list of current potash lessees and potash operators will be available and maintained by the Carlsbad Field Office, BLM. The BLM will assist to the extent possible in identifying the oil and gas and surface owners affected by

the application, plan, or proposal. This notice should be prior to or concurrent with the submission of the application, plan, or proposal to the BLM. The BLM will not authorize any action prior to this notice.

(8) Access to Maps and Surveys.

(a) Well records and survey plats that an oil and gas lessee is required to file pursuant to applicable operating regulations (43 CFR subpart 3160) will be available for inspection at the Carlsbad Field Office, BLM, by any party holding a potash permit or lease on the lands on which the well is situated insofar as such records are pertinent to the mining and protection of potash deposits.

(b) Maps of mine workings and surface installations and records of core analyses that a potash lessee is required to file pursuant to applicable operating regulations (43 CFR 3590) will be available for inspection at the Carlsbad Field Office, BLM. These records are available for viewing by any party holding an oil and gas lease on the same lands insofar as such records are pertinent to the development and protection of oil and gas deposits.

(c) In order for an oil and gas or potash operator to establish and design a core acquisition program for the purposes of proving a Barren Area, those records of core analyses in the area of the planned program that are necessary to design that program should be provided in a timely fashion by the BLM to the operator of the planned program to the extent allowed by law, subject to data management protocols as referenced in Section 6.e.(6)(c), and consistent with 43 CFR part 2 and Sections 3503.41-.43. The BLM will use all data available to it when delineating Barren Areas.

(d) Maps of potash reserves and resources prepared under the provisions of Section 6.d. will be available for inspection in the Carlsbad Field Office, BLM. Digital copies of these maps will be available by mail or at these offices by May 1 of each year. Maps of established Development Areas will be updated as new Development Areas are established. Maps of Development Areas will be provided in a timely fashion by the BLM upon request.

**Sec. 7 Regulatory and Administrative Matters.**

a. This Order applies to the exercise of all existing leases in the Designated Potash Area in conformity with lease stipulations and Federal law.

b. Except to the extent otherwise provided by this Order, the regulations contained in 43 CFR part 3100 and subparts 3160 and 3180 (governing the leasing and development of oil and gas) and 43 CFR part 3500 and subpart 3590 (governing the leasing and development of potash deposits), remain applicable to the lands covered by this Order.

c. In implementing this Order, the BLM is authorized to exercise its discretion through any and all appropriate means, including rulemaking, notices to lessees, and orders of the Authorized Officer.

d. The BLM will obtain and use the best science available when administering this Order consistent with Departmental Manual chapters 305 DM 2 and 305 DM 3. The BLM will comply with the requirements of Secretary's Order 3305, Ensuring Scientific Integrity within the Department of the Interior, dated, September 29, 2010. The BLM has previously used Sandia National Laboratories to provide unbiased



technical assistance in administering the Designated Potash Area and may continue to do so, if the BLM, consistent with all applicable laws, so chooses.

e. The BLM will develop guidelines consistent with this Order for establishing Development Areas and Drilling Islands. In developing such guidelines, the BLM may consider comments and reports from the Joint Industry Technical Committee and other interested parties.

f. The BLM will develop appropriate time-frame guidelines and requirements, as appropriate, to enable timely actions pursuant to this Order.

#### **Sec. 8. The Designated Potash Area Legal Description.**

##### **New Mexico Principal Meridian**

T. 22 S., R. 28 E.,

secs. 25 and 36.

T. 23 S., R. 28 E.,

sec. 1.

T. 19 S., R. 29 E.,

secs. 1 and 2;

secs 11 to 15, inclusive;

secs. 22 to 27, inclusive;

secs. 35 and 36.

T. 20 S., R. 29 E.,

secs. 1 and 2;

secs. 11 to 15, inclusive;

secs. 22 to 27, inclusive;

secs. 34 to 36, inclusive.

T. 21 S., R. 29 E.,

secs. 1 to 5, inclusive;

secs. 10 to 15, inclusive;

secs. 22 to 27, inclusive;

secs. 34 to 36, inclusive.

T. 22 S., R. 29 E.,

secs. 1 to 5, inclusive;

secs. 8 to 17, inclusive;

secs. 19 to 36, inclusive.

T. 23 S., R. 29 E.,

secs. 1 to 17, inclusive;

secs. 21 to 28, inclusive;

secs. 33 to 36, inclusive.

T. 24 S., R. 29 E.,

secs. 1 to 4, inclusive.

T. 18 S., R. 30 E.,

secs. 8 to 17, inclusive;

secs. 20 to 29, inclusive;

secs. 32 to 36, inclusive.

T. 19 S., R. 30 E.

T. 20 S., R. 30 E.

T. 21 S., R. 30 E.

T. 22 S., R. 30 E.

T. 23 S., R. 30 E.

T. 24 S., R. 30 E.,  
secs. 1 to 18, inclusive.

T. 19 S., R. 31 E.,  
secs. 7 and 18;  
secs. 31 to 36, inclusive.

T. 20 S., R. 31 E.

T. 21 S., R. 31 E.

T. 22 S., R. 31 E.

T. 23 S., R. 31 E.

T. 24 S., R. 31 E.,  
secs. 1 to 18, inclusive;  
secs. 35 and 36.

T. 25 S., R. 31 E.,  
secs. 1 and 2.

T. 19 S., R. 32 E.,  
secs. 25 to 28, inclusive;  
secs. 31 to 36, inclusive.

T. 20 S., R. 32 E.

T. 21 S., R. 32 E.

T. 22 S., R. 32 E.,  
secs. 1 to 12, inclusive.

T. 19 S., R. 33 E.,  
secs. 21 to 36, inclusive.

T. 20 S., R. 33 E.

T. 21 S., R. 33 E.

T. 22 S., R. 33 E.,  
secs. 1 to 12, inclusive.

T. 19 S., R. 34 E.,  
secs. 19 and 20;  
secs. 29 to 32, inclusive.

T. 20 S., R. 34 E.,  
secs. 3 to 10, inclusive;  
secs. 15 to 36, inclusive.

T. 21 S., R. 34 E.,  
secs. 5 to 8, inclusive;  
secs. 17 to 20, inclusive;  
secs. 29 to 32, inclusive.

T. 22 S., R. 34 E.,  
sec. 6.

The area described, including public and non-public lands, aggregates 497,002.03 acres,  
more or less.

**Sec. 9 Administrative Provisions.** The Director, BLM, is authorized to delegate  
responsibilities

herein as is determined appropriate. This Order will remain in effect until superseded, replaced, or incorporated into the Departmental Manual.

Ken Salazar

Secretary of the Interior

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